

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2730 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

DILIP DURLABHJI PATEL

Versus

GUJARAT AYURVED VIKAS MANDAL

Appearance:

MR DG SHUKLA for MR SI NANAVATI for Petitioner
MR AD MITHAI for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 15/07/97

ORAL JUDGEMENT

1. The petitioner, an employee of the respondent, filed this special civil application before this Court under Article 226 of the Constitution, and prayer has been made to issue a suitable writ, order or direction holding inter-alia that it is not permissible at law and in equity for the respondent-association to hold an inquiry once again after lapse of three and half years in regard to the very same charges in respect of which a

full-fledged inquiry was once held, completed and no action taken, and that such conduct and action is illegal, unjust, void-ab-initio as violative of the fundamental rights guaranteed to the petitioner under Articles 14, 16 and 311 of the Constitution of India, and that the respondent-association be directed to lift the suspension which was inflicted upon the petitioner right from 7-8-1981 till today. The prayer has been made for interim relief in terms that pending the final hearing and disposal of this special civil application, the respondent-association may be restrained from terminating the services of the petitioner in pursuance to the second show cause notice dated 3-4-1985 annexure 'E' in regard to the very same charges in respect of which once a full-fledged inquiry was held and completed and no action was taken and further directing the respondent to lift the suspension under which the petitioner has been put right from 7-8-1981 in respect of the charges levelled against him for the first time for which a full-fledged inquiry was once held, completed and no action was taken.

2. The brief facts of the case are that the petitioner was appointed by the respondent as a grinder in the year 1978 in its Churan department. The respondent has served chargesheet to the petitioner vide memo dated 7-8-1981. On the same day he was ordered to be placed under suspension. Thereafter, one Shri Harishanker Sharma was appointed as an Inquiry Officer. On 21st August, 1981, the Inquiry Officer has given a notice of inquiry to the petitioner. The inquiry was completed and on receipt of the inquiry report, show cause notice was given to the petitioner by the respondent vide memo dated 10/11-12-1981 to show cause why his services should not be terminated. The petitioner submitted a reply to the said show cause notice. On that show cause notice, it appears that no final order has been passed. Shri M.V. Raval, advocate, was appointed vide order dated 24th December, 1983 as the Inquiry Officer in the matter to hold the inquiry in respect of the chargesheet dated 7-8-1981 against the petitioner. The Inquiry Officer, Shri M.V. Raval, advocate, vide his letter dated 27th June, 1984 has informed the petitioner of the time, date and place of the inquiry. He completed the inquiry in which the charges levelled against the petitioner were found proved. The respondent has given second show cause notice to the petitioner vide memo dated 3-4-1985 to show cause why he should not be dismissed from the services. In spite of giving reply to the said show cause notice, the petitioner filed this special civil application on 16th May, 1985 and challenges the validity of the said

show cause notice. The petitioner has prayed for the amendment of the special civil application, which has been granted by this Court on 25th February, 1986. By this amendment, the petitioner has given out his entitlement for 75% of the salary for the period of suspension. The petitioner has stated in this special civil application that the respondent-association also lodged a criminal complaint being criminal case No.4389/81 in the Court of Judicial Magistrate First Class, Junagadh and in the said criminal case, he was ordered to be acquitted by the Court vide order dated 19th July, 1982.

3. This special civil application has come up for admission before this Court on 16th April, 1985, on which date, notice was issued to the respondent returnable on 18-4-1985. By way of interim relief, it has been ordered that in the mean time, the petitioner to continue under suspension and no final orders to be passed. The interim relief which has been granted by this Court continues till date.

4. The special civil application has been contested by respondent and affidavit in reply has also been filed.

5. The learned counsel for the petitioner contended that once the inquiry has been conducted on the chargesheet and therein the respondent has reached to the stage of show cause notice but no final order has been passed, the respondent has no authority to hold fresh inquiry in respect of the same charges. The second contention of the counsel for the petitioner is that the petitioner has been acquitted in the criminal case in respect of the same incident which was the subject matter of the inquiry, and as such, the respondent has no authority to hold inquiry thereafter. It has next been contended that once the respondent has not taken any action on the first show cause notice then it is estopped from taking any action and to terminate the services of the petitioner by holding an inquiry on the said chargesheet again. It has next been contended that there is delay in initiation of departmental inquiry against the petitioner. Lastly, the counsel for the petitioner contended that the petitioner was placed under suspension and his suspension was unnecessarily prolonged, and as such, he is entitled for the subsistence allowance at the rate of 75% of the total wages. In support of his contention the counsel for the petitioner placed reliance on the following decisions:

(i) In the case of M.D. Parmar vs. Y.B. Zala

reported in 1980 (I) LLJ 260.

(ii) In the case of G. S. R. T. Corporation, Ahmedabad vs. Rupsinh reported in 1985 L.I.C. 1095.

(iii) In the case of R.J. Divekar vs. Union of India reported in 1984 L.I.C. 1752, and

(iv) Sukh Chand & Salek Chand vs. Commissioner of Police & Ors. reported in 1994 Supp. (3) SCC 674.

6. On the other hand, the counsel for the respondent contended that in the first inquiry, the final order has not been passed. The first inquiry was found to be defective as it has been held ex-parte, and on the legal opinion, no decision has been taken therein. In view of this fact, when the final decision has not been taken in the said inquiry, the respondent was within its competence to hold fresh inquiry. So far as the second contention is concerned, the counsel for the respondent contended that there is no bar to hold the departmental inquiry in respect of misconduct alleged against the petitioner. The criminal case relates to the criminal liability of the petitioner and even if he is acquitted therein there is no bar to hold the departmental inquiry. So far as the claim of subsistence allowance is concerned, the counsel for the respondent submitted that it is not a case where the delay in inquiry may be attributable to the respondent.

7. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

8. The petitioner has come up before this Court at the stage when the second show cause notice was given to him. The petitioner should have taken all the objections available to him against the inquiry as well as on other grounds in reply to the show cause notice. It is not the case where it can be said that the respondent has no jurisdiction to give the show cause notice. It is also not the case where it can be said that the respondent absolutely lacked the competence to issue the show cause notice after the second inquiry. The respondent has given out an explanation as to why on the first inquiry, the final order has not been passed. In case, the first inquiry has been held ex-parte without notice to the petitioner then naturally any action taken thereon may likely to be set aside by the competent authority or civil court or this Court to which the petitioner would have approached. In such case, if the respondent acted

upon the legal advice given to it by the legal expert not to act upon that inquiry and to proceed further by appointing another Inquiry Officer and after giving the petitioner an opportunity of hearing, no illegality in the action is there. Otherwise also, in the first inquiry in respect of the charges which have been framed against the petitioner, he was not exonerated. It is understandable in a case where the inquiry had finally concluded and the final decision has been taken therein then on the same charges the disciplinary authority or the respondent may not be competent to hold the inquiry again. This course would have been barred on the principle, "a person cannot be prosecuted for the same offence twice". But in this case, the final order has not been passed. The inquiry was not culminated finally in exoneration. It was at the stage of show cause notice and thereafter for the reasons stated earlier, the respondent has not proceeded in the matter and has decided to hold the fresh inquiry. The action taken on the basis of first inquiry would have been subject to judicial scrutiny by this Court or the civil court or any other appropriate authority to which the petitioner would have approached and in that situation, ultimately in case where it is found that the petitioner has not been given fair opportunity of hearing then the matter would have been sent back to the Inquiry Officer. The inquiry has to be proceeded from the stage where the defect therein has been found. In the case of State of Punjab reported in JT 1996 (5) SC 403 their Lordships of the Hon'ble Supreme Court held that where the inquiry is found to be defective then it will not give automatic right of reinstatement to the delinquent employee. The inquiry has to be proceeded from the stage where it was found to be defective. So otherwise also in that case, the inquiry has to be started against the petitioner from the stage it was found defective. So the first contention of the learned counsel for the petitioner is devoid of any substance.

9. So far as the second contention regarding the holding of departmental inquiry after acquittal of the petitioner in criminal case is concerned, it is suffice to say that this matter has to be agitated by the petitioner before the authority concerned in reply to the show cause notice and that authority would have considered the same. The petitioner's counsel has cited certain decisions, but those decisions should have been placed by the petitioner for the consideration of the respondent in reply to the show cause notice. Merely because in the criminal case, the petitioner has been acquitted, it cannot be said that no departmental inquiry

can be initiated in each and every case. It depends on the facts of each case and on which no final opinion has to be expressed at this stage when the matter has to be considered by the disciplinary authority after reply of the petitioner to the show cause notice.

10. The contention of the learned counsel for the petitioner regarding the delay in initiation of departmental inquiry is concerned, though prima-facie there seems to be no delay, but I am not expressing any final opinion as this matter is at the stage of show cause notice and this ground is available to the petitioner to be agitated in reply to the show cause notice.

11. Similarly, the claim regarding the subsistence allowance is concerned, the petitioner has a liberty to file a representation to the respondent in this regard. In case such a representation is filed then it has to be considered by the respondent in accordance with law.

12. The petitioner has approached to this court against the show cause notice and in view of the decision of the Supreme Court in the case of Sakti vs. R.K. Ragala reported in 1996 (7) SCC 166 this petition is premature at this stage.

13. However, it is open to the petitioner to raise all the objections in reply to the show cause notice other than the objections which have been decided in this judgment and it is expected of the respondent to consider the same in accordance with law.

14. Similarly, regarding the subsistence allowance, the petitioner is at liberty to file a representation to the respondent and the same shall be decided in accordance with law and in case the petitioner's entitlement is accepted then the arrears payable to the petitioner should be determined and the same should be paid to him within reasonable time.

15. In the result, this special civil application fails and the same is dismissed. Rule discharged. Adinterim relief granted by this Court stands vacated.
